IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.604 OF 2005
IN
SUMMARY SUIT NO.2120 OF 2005

Konkan Synthetics Chemicals P.Ltd. ..Plaintiffs

Vs.

Multi Organic P.Ltd ..Defendants

Mr.R.V.Govilkar for the plaintiffs

Mr.Sameer Tendulkar for the defendants

CORAM : S.U.KAMDAR, J
DATED : 21ST FEBRUARY, 2006

P.C.:

1. The present suit is filed on the basis that the cheque was given for a loan for Rs.10 lacs and the same is encashed by the defendants and the interest claimed thereon is Rs.1,60,000/-. The total claim is Rs.11,60,000/-.

2. The learned counsel for the plaintiffs states that the suit is maintainable as summary suit under section 70 and section 73 of the Indian Contract Act. In so far as section 73 of the

Indian Contract Act is concerned, in my opinion the said provision has no application whatsoever. The said provision applies only in cases of damages. Provision of section 73 of the act interalia provides compensation for loss or damage caused by breach of the contract. Section itself says that when the contract has been broken, the parties who suffers by such breach is entitled to receive, from the other party who has broken the contract, compensation for any loss or damage caused to him. Principal of restitution as enunciated under section 73 of the act is based on loss or damage suffered by a party. If it is the contention of the plaintiffs that the suit is filed under section 73 of the Contract Act, then the defendants are obviously entitled to unconditional leave to defend because loss or damage is required to be proved under section 73 of the Contract Act.

3. The next contention advanced is that the suit is maintainable under section 70 of the Contract Act. In my opinion, the contention has no merits. In the light of the order of the the Division Bench in the case M/s.Pravin Trust and

Ors. Vs. Commodity Impex in Appeal No.178 of 2000 decided on 1.3.2000 in which it has been interalia held that the summary suit is not maintainable on honoured cheque on the ground of section 70 of the Contract Act. In that light of the matter, unconditional leave to defend is granted.

4. Suit to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.